# In the Supreme Court of the United States

OCTOBER TERM, 1968

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No. 778

FRANK KENT, PETITIONER

*v.*

UNITED STATES OF AMERICA

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*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT*

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## MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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In the United States District Court for the Northern District of Illinois, petitioner, on June 14, 1967, entered a plea of guilty to five counts charging illegal sales of stimulant drugs, in violation of 21 U.S.C. 331(q)(2). That same day he was sentenced to imprisonment for nine months on each count, to run consecutively, and fined $2,500.

Two weeks later, petitioner filed with the sentencing court a motion under 28 U.S.C. 2255 to vacate

his sentence, claiming that his plea had not been voluntarily made and that the trial judge had failed to conduct an adequate inquiry into his guilty plea, as required by Rule 11, F. R. Crim. P., before accepting it (A. 10-27).[1] After a hearing the district court denied the motion (A. 47-49).

The court of appeals affirmed the judgment on June 18, 1968, 397 F. 2d 446. A petition for rehearing was denied on August 26, 1968. No request for an extension of time within which to file a petition for a writ of certiorari was made. Under 28 U.S.C. 2101(c), the time for invoking the certiorari jurisdiction of this Court expired on November 25, 1968. The petition was not filed until November 26, 1968. It is thus out of time under the statute and Rule 22(3) of the Rules of this Court. See *Morrison* v. *United States*, No. 502, this Term, certiorari denied, November 25, 1968; *Morales et al* v. *Immigration and Naturalization Service*, Nos. 77 Misc. and 78 Misc., this Term, certiorari denied, October 14, 1968.

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[1] "A." refers to the "Appendix For Defendant-Appellant," filed with the Clerk of this Court.

For the reasons stated it is respectfully submitted that the petition for a writ of certiorari should be denied or dismissed.

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JANUARY 1969.

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